

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION

No. 4:12-CR-00083-F-1

UNITED STATES OF AMERICA)	
)	
v.)	<u>ORDER</u>
)	
LARRY DARNELL KINSEY, JR.,)	
Defendant.)	

This matter is before the court on Defendant's "Motion Pursuant to Specific Performance of Plea Agreement" [DE-42]. In his motion, Defendant argues that this court should schedule an evidentiary hearing to determine whether the Government acted in bad faith by not filing a motion for substantial assistance.

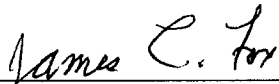
Only the government can file a motion for "substantial assistance." *See United States v. Butler*, 272 F.3d 683, 686 (4th Cir. 2001). The court cannot review the government's failure to file a motion for substantial assistance unless the defendant makes a substantial showing that the government's failure to file the motion was "based on an unconstitutional motive," such as racial or religious animus, or is "not rationally related to any legitimate Government end." *Wade v. United States*, 504 U.S. 181, 185-86 (1992).

In this case, Defendant has presented no evidence of an improper motive behind the Government's decision not to file a motion for substantial assistance in his case. Thus, there is no evidence that the Government's failure to bring a substantial assistance motion was unconstitutional. Accordingly, Defendant's "Motion Pursuant to Specific Performance of Plea Agreement" [DE-42] is DENIED, and the Government's Motion to Dismiss [DE-46] is

DISMISSED as moot.

SO ORDERED.

This 15th day of January, 2014.



JAMES C. FOX
United States District Judge